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CITATIONS

Case:	
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Statute:	
Revenue Act of 1934, 48 Stat. 680:	
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413563—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 347

TASTY BAKING COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion below (R. 10–14) is reported in 38 F. Supp. 844.

JURISDICTION

The judgment of the Court of Claims was entered May 5, 1941 (R. 14). The petition for a writ of certiorari was filed August 4, 1941. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the tax imposed by Section 602½ (a) of the Revenue Act of 1934 upon "the first domestic processing" of certain vegetable oils applies to the first domestic processing occurring after the effective date of the Act, where a domestic processing had occurred prior to the Act.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statute and regulations involved are set forth in the Appendix, *infra*, pp. 5–7.

STATEMENT

The facts as found by the court below may be summarized as follows:

Petitioner is a Pennsylvania corporation engaged in the manufacture and sale of bakery products (R. 6). On May 10, 1934, the effective date of the Revenue Act of 1934, it owned substantial quantities of refined coconut oil and of mixtures containing such oil (R. 6). Subsequently, it purchased additional quantities thereof which had been refined prior to May 10 (R. 7). During the period between May 10, 1934, and January 31, 1935, petitioner used all the oil, including that contained in the mixtures, in the manufacture of its bakery products (R. 7). During the same period it filed monthly tax returns showing such use and paid processing taxes thereon in the aggregate amount of $18,309.76 (R. 7). All of the

oil had been processed in the United States by petitioner's vendors prior to the effective date of the Act, but petitioner's use of it was the first domestic processing of it after the Act was effective (R. 7).

On April 10, 1935, petitioner filed a claim for refund of the taxes upon the ground, in substance, that the processing done by it was not the "first" processing within the meaning of Section 602½ (a) of the Act, which imposes a tax upon "the first domestic processing" of coconut oil and mixtures containing such oil (R. 8–9). On October 30, 1935, the Commissioner of Internal Revenue rejected the claim for refund (R. 9–10). Thereafter petitioner instituted the present suit in the Court of Claims to recover the above amount of taxes with interest (R. 1–5). The court dismissed the petition (R. 14). In construing Section 602½ (a) to apply to the processing by petitioner, the court followed the interpretation embodied in Treasury Regulations 48 and adopted by the Circuit Court of Appeals for the Second Circuit in *Loose-Wiles Biscuit Co.* v. *Rasquin,* 95 F. (2d) 438, certiorari denied, 305 U. S. 611, that the term "the first domestic processing," as used in the Act, means the first such processing occurring after the Act became effective, whether or not a domestic processing occurred prior to the Act (R. 12–14).

ARGUMENT

Although the court below may have laid undue stress upon the denial of certiorari in the *Loose-Wiles* case, its decision is nevertheless in accord with the Second Circuit's decision in that case, and no new grounds for review are presented here. Petitioner does not allege a conflict with any circuit court of appeals decision, and the district court decisions alleged to be in conflict were similarly relied upon in the petition in the *Loose-Wiles* case. Moreover, we are informed by the Bureau of Internal Revenue that although claims for refund in some one hundred similar cases were filed by taxpayers following the enactment of the Revenue Act of 1934, the claims of all but seven including petitioner have been disposed of during the past seven years. The decision is in accord with applicable Treasury Regulations (Articles 1, 3, 4, Regulations 48, Appendix, *infra*, pp. 6–7), and does not call for review by this Court. The petition should be denied.

Respectfully submitted.

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SEPTEMBER 1941.